ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

October 24, 2002

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: BellSouth Telecommunication Inc. Tariff FCC No. 1, Transmittal No. 657, WC Docket No. 02-304

Dear Ms. Dortch:

Attached is the Association for Local Telecommunications Services' ("ALTS"") Opposition to the Direct Case of BellSouth Telecommunications Inc. for filing in the above-captioned proceeding.

Sincerely,

/s/

Teresa K. Gaugler

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
BellSouth Telecommunication Inc. Tariff	)	**WC Docket No. 02-304**
FCC No. 1, Transmittal No. 657	)	
	)	

OPPOSITION TO DIRECT CASE

The Association for Local Telecommunications Services ("ALTS") hereby files its Opposition to the Direct Case of BellSouth Telecommunications, Inc. ("BellSouth"), submitted in the above-referenced proceeding in response to the Commission's Order,[1] regarding the suspension of BellSouth's proposed tariff amendments in Transmittal No. 657.[2]

In the Designation Order, the Commission established areas for investigation and requested that BellSouth provide certain specific data related to those issues, as well as provide justification why its current tariff language and its price cap rates do not adequately protect from or compensate for the business risk of customer nonpayment. Although BellSouth provides some of the requested data, the arguments presented in its Direct Case are largely unresponsive to the Commission's requests. BellSouth repeatedly points out that bankruptcies have occurred and that its uncollectibles have increased during the past few years; however, those facts alone do not warrant such a drastic change in its deposit policy. Most importantly, BellSouth has not shown that the rise in its uncollectibles is a systematic long-term problem

[1] *BellSouth Telecommunications Inc., Tariff FCC No. 1, Transmittal No. 657*, Order, WC Docket No. 02-304, DA 02-2318 (rel. Sept. 18, 2002) ("*Designation Order*").

rather than due to natural fluctuations in the market, that its current tariff language and price cap rates are inadequate to protect from or compensate for any future risk of uncollectibles, or that its proposed new method of assessing customer creditworthiness is a better indicator of future payment than its current method of relying primarily on past payment history.

BellSouth's true motive in this proceeding is clear – to undermine the market-opening provisions of the Telecom Act in order to maintain its monopoly position in the market. By utilizing vague and ambiguous factors to supposedly determine a carrier customers' creditworthiness, BellSouth would be allowed to squeeze those competitors that most threaten its current market power. Under the guise of gaining protection against financial loss, BellSouth (along with Verizon and SBC that have filed similar revised tariff provisions) instead seeks Commission support to drive the remaining CLECs into further financial distress. ALTS opposes BellSouth's tariff revisions and urges the Commission not to grant BellSouth the opportunity to further drive competitive carriers from the market or to treat those carriers in an anticompetitive manner.

BellSouth currently may require a security deposit from customers with no established credit or with a proven history of late payments. Under its new tariff provisions, BellSouth proposes additionally to require a security deposit from a customer if that "Customer's credit worthiness decreases to a commercially significant extent as compared to the level of credit worthiness determined by BellSouth when that Customer's service was established" or if that customer's gross monthly billing has increased since BellSouth first determined if a security

(Continued from previous page)

[2] On August 2, 2002, the Commission suspended BellSouth's proposed tariff revisions for a five (5) month investigation period. *BellSouth Telecommunications, Inc.,* Transmittal No. 657, DA 02-1886, rel Aug. 2, 2002 ("*BellSouth Suspension Order").*

deposit was required.[3] BellSouth describes the process it plans to use in assessing the creditworthiness of its customers as a "commercially acceptable credit scoring tool applied in a commercially reasonable manner."[4] However, there are no generally accepted meanings for the terms "commercially acceptable" and "commercially reasonable" in this context, and other than identifying in its Direct Case two possible credit analysis models it may use, BellSouth makes no attempt to further clarify the process it intends to employ. This is just a recipe for mischief hatched by the monopoly provider to further stall competition, and BellSouth's repeated references to "commercially acceptable" and "commercially reasonable manner" and "commercially sound"[5] do nothing to mitigate the fact that the terms of its tariff are overly broad and ambiguous. BellSouth has not attempted to more specifically describe the factors it would consider in addition to the credit analysis models or the weight it would grant each or all of those factors. This prevents customers from receiving fair notice of the terms of the tariff and, as the Commission suggested, also thwarts the dispute resolution process by providing almost no direction to an arbitrator about what factors are appropriate to consider.[6]

BellSouth indicates that both credit analysis models, RAM and RiskCalc, are highly reliable predictors of credit risk,[7] but then goes on to describe how it would supplement the

[3] BellSouth Tariff FCC No. 1, Second Revised Page 2-21.1, section 2.4.1(A) and Sixth Revised Page 2-21, section 2.4.1(A).

[4] BellSouth Tariff FCC No. 1, Sixth Revised Page 2-21, section 2.4.1(A).

[5] BellSouth's Direct Case ¶ 25-32.

[6] *Designation Order* ¶ 25.

[7] BellSouth's Direct Case ¶ 30.

analysis of those models with its own judgment based on "current information."[8] It might seem reasonable for BellSouth to adjust a customer's rating that was based on historical information if, as it describes in the Direct Case, that historical information itself is called into question by a company announcement regarding accounting irregularities in its previously reported data. However, BellSouth's supplementation of these credit risk models would not end there, and BellSouth has in no way limited itself to clarifying or correcting such historical data. On the contrary, BellSouth has suggested it would use its presumably omnipotent powers to decipher information from sources such as newspapers and other ambiguous "publicly-available information" to determine whether that information indicates a likelihood of nonpayment in the future. Moreover, there appears to be nothing incorporated into BellSouth's tariff to prevent it from completely overriding a good credit rating from the models on the basis of a bit of gossip a BellSouth employee heard about one of its carrier customers. For these reasons, BellSouth's tariff is unreasonably vague and ambiguous in violation of Section 61.2 of the Commission's rules that "all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations."[9]

The Commission requested that BellSouth "explain how each of these factors is a valid predictor of whether a carrier will pay its interstate access bill;"[10] however, BellSouth declined to provide such an explanation, and instead merely describes the process it proposes with no further justification for its validity. BellSouth acknowledges that it would still experience

[8] BellSouth's Direct Case ¶ 29-32.

[9] 47 CFR § 61.2.

[10] *Designation Order* ¶ 15.

uncollectibles even with its proposed "commercially reasonable deposit provisions."[11] It states that such provisions would "limit BellSouth's exposure to unreasonable risks that arise due to a customer's financial condition;"[12] however, BellSouth provides no support for why those provisions would limit its exposure. It would be impossible to accurately predict every customer that will default on its payment obligations and one could imagine that a customer might have a stellar payment history and then suddenly default without warning; however, review of a customer's past payment history is still the most reliable objective method of assessing whether that customer is likely to default on its payment obligations in the future. BellSouth has not demonstrated than any of the additional factors it intends to consider will provide it with more accurate information to predict which customers are likely to default, and many competitive carriers have raised concerns that they would likely be swept into BellSouth's dragnet and subjected to burdensome deposit requirements when in fact their companies are not at risk of default. As ALTS and others have highlighted in related proceedings, subjecting these carriers to further deposits when they are already financially stretched would have severe negative effects on local competition. ALTS strongly agrees with the Commission that "an approach that has the fewest adverse effects on the competitive market while protecting BellSouth's interests would be preferred."[13] In fact, ALTS believes such a result is *required* – the Commission should not subjugate the needs of competitors to those of the dominant provider.

[11] BellSouth's Direct Case ¶ 18.

[12] *Id.*

[13] *Designation Order* ¶ 14.

BellSouth argues that the measures it proposes are consistent with those utilized in other industries; however, companies in a competitive industry would not be permitted by market forces to impose such unreasonable demands on their customers. If they did so and the customer had an alternative supplier, then the customer would simply leave its current supplier rather than submit to the demands. That is not an option in the local telecom market, however, because competitive carriers are unable to simply replace all the services they receive from the ILECs with services from an alternative carrier. CLECs are captive wholesale customers and thus need the Commission to prevent the ILECs from imposing unreasonable and discriminatory demands on them so that they can continue to provide valuable competitive services to consumers.

BellSouth seeks to unilaterally impose burdensome deposit requirements on competitive carriers without clear and objective indications that each carrier is at risk of nonpayment. For instance, security deposit requirements may be imposed on a carrier even if in the past that carrier has consistently and timely paid its amounts due to the BellSouth. BellSouth seeks to use vague or unrelated criteria to judge that such a carrier is now at risk of no longer paying in such a manner. These criteria have little correlation to whether that carrier will make payments in the future, and furthermore, BellSouth is already adequately protected from nonpayment risk by security deposit provisions currently in its tariff as well as through its price cap rates.[14] BellSouth makes general statements about the financial stress and upheaval of the telecom industry, but such generalities do not support its request for additional protections against potential financial fallout from virtually every carrier in the industry. The current market

[14] *Id.* ¶ 3.

volatility, by itself, does not warrant imposing such burdensome requirements on virtually all carrier customers under its tariff.

Moreover, imposing such requirements will merely further increase financial uncertainty for many competitive carriers. Most competitive carriers are already financially stretched and are judiciously spending their working capital. To now require them to tie up more of that working capital in the hands of their biggest competitors is to doom competition and possibly lead to the demise of many of those carriers. Compelling them to pay additional funds to each of the ILECs to insulate the ILECs from potential financial risk only adds to the current financial uncertainty because competitive carriers would not have access to that working capital to run their businesses and generate revenues in order to timely pay the ILECs for services they purchase.

As the Commission alluded, its ratemaking policies for price cap carriers provide a mechanism to adequately compensate BellSouth for the risk of uncollectibles. BellSouth failed to respond to the Commission's request why those rates do not adequately compensate it for this risk, nor did BellSouth provide any evidence that the variation in its uncollectibles for 2000 and 2001 is a long-term trend rather than a normal fluctuation accounted for by the business risks included in its price cap rates. Furthermore, BellSouth's data indicate that it may not be fully utilizing the means currently available under its tariff to impose security deposits on customers with poor payment history since it holds only $16 million in deposits, or 5.5% of its $298 million in monthly charges. BellSouth provides no details regarding the past payment history of carriers that defaulted and admits "it did not track customer data in this manner,"[15]

[15] BellSouth's Direct Case ¶ 32, fn 18.

but it is reasonable to assume that BellSouth could (and should) have reevaluated some of those carriers' creditworthiness under its current tariff provisions and imposed additional deposit requirements based on their poor payment history. In this way, BellSouth could have ameliorated its loss due to bad debt. Instead, BellSouth has now chosen to employ a vague process which could easily be arbitrarily and anticompetitively applied and which very likely would have adverse effects on the competitive telecom industry as a whole, rather than specifically on those carriers with a track record of poor payment.

BellSouth's current policy is to refund a customer's security deposit once the customer has established credit or has promptly paid its bills for a one-year period.[16] BellSouth proposes to drastically change that policy by virtually ignoring a customer's long-term good payment history and only refunding the deposit if BellSouth determines it is creditworthy based on the same analysis conducted to impose the security deposit.[17] Moreover, BellSouth refuses to commit to initiate re-assessment of customers' creditworthiness and instead requires customers to make a written request for re-assessment. This process is unreasonable and should be rejected by the Commission.

Contrary to BellSouth's assertion that "the customer is the best resource as to determine when creditworthiness has improved,"[18] without further details about the factors BellSouth considers when assessing a company's credit risk, it would be near impossible for a customer to determine when its creditworthiness has improved to meet BellSouth's criteria.

[16] BellSouth Tariff FCC No. 1, section 2.4.1(A).

[17] BellSouth Tariff FCC No. 1, Second Revised Page 2-21.2, section 2.4.1(A).

[18] BellSouth's Direct Case ¶ 34.

Furthermore, the most common and legitimate means of assessing a customer's creditworthiness – past payment history – is being all but ignored by BellSouth in its assessment. BellSouth claims its resources are too limited to conduct annual review of customers' credit;[19] however, if BellSouth has the resources to undergo the more in depth credit analysis it proposes, it should have the resources to repeat that process at least on an annual basis for each customer. No doubt BellSouth will find the necessary resources to continually assess whether it can extract additional security deposits from customers. Furthermore, BellSouth states that it is "ready, willing and able to respond to a customer's request to review its credit standing."[20] Thus, either BellSouth has the resources but refuses to utilize them to benefit its customers, or it does not have the resources and therefore it is not "ready, willing and able" and will likely delay the process when requested by its customers. Either outcome is unacceptable. Because BellSouth has the initial burden to show that a deposit is required under its credit analysis, the onus should likewise be on BellSouth to re-assess each customer at least annually *and* on request by a customer to determine if a deposit requirement is still necessary, according to its analysis. Furthermore, if BellSouth denies a refund to a customer, that customer should have the right to contest that finding through the dispute resolution process.

[19] *Id.*

[20] *Id.*

CONCLUSION

ALTS urges the Commission not to allow the BellSouth the opportunity to unilaterally drive more competitive carriers out of the market with its unreasonable and anticompetitive demands. The Commission should reject BellSouth's tariff revisions because they are vague and ambiguous and BellSouth has failed to show that its proposed new methods would better predict customer defaults.

Respectfully Submitted,

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October 24, 2002